



AMENDED SUMMARY TERM SHEET

McMillan Redevelopment Project

February 12, 2009

The following terms outline the general terms upon which Vision McMillan Partners, a limited liability company ("VMP") and the Government of the District of Columbia (the "**District**") wish to proceed with negotiating a Land Disposition Agreement ("**LDA**") with respect to the redevelopment of the 25-acre McMillan Sand Filtration Site in Northwest Washington, DC. The parties acknowledge that VMP and the District entered into a summary term sheet dated December 20, 2007 ("**Original Summary Term Sheet**") with respect to the proposed development of the foregoing property and that it is the intention of the parties that this Amended Summary Term Sheet ("**Amended Summary Term Sheet**") shall amend and redefine the Original Summary Term such that this Amended Summary Term Sheet shall supercede in its entirety the Original Summary Term Sheet.

THE DISTRICT: The District is acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**ODMPED**").

VMP:

- VMP includes the following member companies (the "**VMP Development Team Members**") (See **Exhibit A**):
 1. EYA, LLC (EYA)
 2. The Jair Lynch Companies (JLC)/MacFarlane Partners (MacFarlane)
 3. Urban Service Systems Corporation (USSC)/Smoot Construction (Smoot)
 4. The Alexander Company (Alexander)
 5. Street Sense
- VMP will be managed by EYA or a partnership or limited liability company in which the principals of this company are directly, or through the ownership of a corporation, the managing member. VMP may choose to include additional members in VMP, provided that the management of EYA in VMP shall not be modified without the consent of ODMPED.

PROPERTY: The 25-acre McMillan Sand Filtration Site, bounded by North Capital Street NW, Channing Street NW, First Street NW, and Michigan Avenue NW in the District of Columbia (the "**Property**").

THE PROJECT: Through the coordination of a sequence of planning, financing, development and construction activities, the redevelopment of the Property (the "**Project**") will include both the 1) land development and the 2) construction of vertical improvements on the Property by vertical component developers. The land development will result in a number of entitled, ready-to-build pad and super pad sites serviced by backbone common infrastructure, including streets, utilities, lighting and common



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area amenities, such as active open space, community facilities and landscaping. The vertical component of the redevelopment entails the disposition of said pad sites to vertical component developers, which will include VMP Development Team Members and others identified by VMP, if any, for the construction of vertical improvements. The process and timing for disposition of said pad sites is articulated in the vertical component development process section of this Amended Summary Term Sheet. Based on the guidelines established by the community stakeholders, the vertical improvements to be constructed on the Property will include integrated historic preservation elements, mixed-income housing, community-serving retail, job-creating commercial space, and education and cultural amenities.

THE ROLE OF VMP:

- VMP will serve as the master developer, hereinafter defined, (the "**Master Developer**") of the Project and will work with ODMPED and subcontractors on all planning, land development activities, and vertical component activities (to the extent provided in this Amended Summary Term Sheet).

Master Developer: means an entity selected by District for the planned development of the Project, including all of the obligations of VMP as described in the following paragraphs.

- VMP will arrange for all necessary private capital, in the forms of debt and equity, for the land development portion of the Project. VMP also will seek public financing tools appropriated by federal and local agencies, including the U.S. Department of Housing and Urban Development ("**HUD**"), the D.C. Department of Housing and Community Development ("**DHCD**"), the D.C. Housing Finance Agency ("**HFA**"), and ODMPED. Furthermore, VMP will seek funding mechanisms, such as the Housing Production Trust Fund, Tax Increment Financing ("**TIF**"), and/or Payment In Lieu of Taxes ("**PILOT**") to finance the Land Development component of the Project.
- VMP will work with the existing McMillan Advisory Group (MAG), in surrounding neighborhoods and certain District agencies to produce a proposed development program that will include the historic preservation of certain filter cells and sand storage bins and the development of open space, mixed income housing, neighborhood serving retail, cultural amenities and commercial/office space.
- VMP will manage, along with ODMPED, all community outreach initiatives, based upon a mutually agreed upon schedule and communication process.
- VMP will provide to ODMPED short-lists of third party consultants and sub-contractors, including Certified Business Enterprise (CBE)



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firms, as defined under D.C. Official Code §§ 2-217.01 (2007) *et seq.*, such as master planners, architects, engineers, land planners, landscape architects, and land use attorneys. VMP will comply with all District equal opportunity employment and employment covenant guidelines pertaining to CBEs, First Source and apprenticeship programs, as well as appropriations and procurement, and in its contracts with its consultants and subcontractors with respect to the Project, VMP will require its consultants and subcontractors to comply with all such guidelines and programs and make best efforts to enforce those provisions of said contracts. VMP will select and hire all consultant teams and provide "letters of value" (proof of Industry Standard terms and fees) and proof of CBE participation.

- VMP will be responsible for all necessary pre-land development work approval processes, including but not limited to, the development plan process, the planned unit development (PUD) process, the Historic Preservation Review Board (HPRB) process, with the intent of obtaining pre-construction land development and architecture approvals. VMP shall be solely responsible for paying for all costs and fees associated with obtaining the aforementioned approvals.
- VMP will apply for, obtain, and pay for all permits required for the land development component of the Project.
- VMP will be responsible for completing all land development work, including but not limited to, demolition, earthwork, grading, installation of trunk utilities and spine roads and implementation of traffic improvements. The result of the land development activities will be a number of finished pads suitable for the development of vertical improvements. The land development work to be performed by VMP does not include the land development work that will need to be completed on individual development parcels/pad sites which will be the responsibility of the vertical component developer for that particular development parcel/pad site.
- VMP will contract with the VMP Development Team Members and other builders identified by VMP known collectively as the "vertical component developers", including Local, Small and Disadvantaged Business Enterprise ("LSDBE") firms as defined by District of Columbia Department of Small and Local Business Development ("DSLBD"). The contracts between VMP and all vertical component developers will require that the party acquiring a portion of the Property for the construction of the vertical improvements will contribute an amount equal to the fair market value of the finished pad site(s) which it acquires into an escrow account to be used to pay for the land development work to be performed by VMP. District will convey the pad sites on which the vertical improvements are to be constructed directly to the designated vertical component developers who will be responsible for the construction of the vertical improvements on their respective pad sites following the land development work, and to the extent that all such pad sites are not conveyed by the District to the vertical component developers at the



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Land Closing (as hereinafter defined) with the District, then such remaining pad sites will be conveyed by the District to VMP at the Land Closing. ODMPED will approve a concept site plan developed by VMP to be included in the LDA, which will include a detailed development program, land use mix, and summary of some or all of the vertical component developers who are not VMP Development Team Members, if in fact there are any vertical component developers who are not VMP Development Team Members. ODMPED must review and approve all construction drawings, schematics and preliminary plans, and construction of the vertical improvements will be substantially in accordance with the plans approved by ODMPED.

- VMP will coordinate the Project, including all land development activities and will provide project oversight of all vertical development activities, including reports to be provided by VMP to ODMPED with respect to the status of the vertical development activities by the vertical component developers.
- Individual VMP Development Team Members will construct the vertical improvements on those finished pad sites identified by VMP, based upon the concept site plan approved by ODMPED and the product types to be constructed by each of the VMP Development Team Members on those pad sites. To the extent that there is a change in the concept plan, product type to be developed on a pad site, or a change in the identification of the vertical component developer for such pad site, such changes shall be subject to the prior approval of ODMPED, which approval shall not be unreasonably withheld, conditioned or delayed. VMP and ODMPED will establish appropriate guarantees and reversion rights for the land development and the vertical component development in accordance with the proposal set forth in **Exhibit B** (in draft form pending revision and final agreement between ODMPED and VMP, to be included as an amendment hereto) attached to this Amended Summary Term Sheet. All vertical component developers, including VMP Development Team Members and all 3rd party vertical component developers who are not VMP Development Team Members, if any, will abide by the guaranty structure outlined in **Exhibit B** (in draft form pending revision and final agreement between ODMPED and VMP, to be included as an amendment hereto) to this Amended Summary Term Sheet.



**THE ROLE OF
THE DISTRICT:**

- VMP will submit to ODMPED a “master plan” for the development of the Property no less than ninety (90) days prior to the intended PUD submission due date. Within sixty (60) days of receipt of the master plan, ODMPED will review the proposed master plan and submit comments to VMP on the master plan. VMP and ODMPED will work cooperatively to address all of ODMPED’s comments.
- All VMP Development Team Members in addition to those identified on page 1 of this Amended Term Sheet, and all other vertical component developers who are not VMP Development Team Members and are selected by VMP to acquire pad sites will be subject to the reasonable approval of ODMPED.
- ODMPED may recommend to VMP, as appropriate, consultants and subcontractors, including CBE firms, which VMP may hire to work on the Project.
- At the time of the Land Closing with VMP, the District will directly deed development parcels to the vertical component developers who are VMP Development Team Members and those vertical component developers who are not VMP Development Team Members, if any, who have been identified by VMP and approved by ODMPED and are acquiring their respective development parcels as of the date of the Land Closing with VMP, and the District will deed the common areas directly to an owners association formed by VMP for the community. In addition, ODMPED will assist VMP in obtaining a real estate tax abatement with respect to the development parcels which will be conveyed to VMP (and not vertical component developers) at Land Closing, for the period between the date of Land Closing when VMP acquires title to the unsold parcels and the date when such unsold parcels are conveyed to third-party vertical component developers for construction of the vertical improvements thereon.
- ODMPED will cooperate with VMP in planning and construction activities involving District of Columbia government agencies, including the Office of Planning (OP), the D.C. Department of Transportation (DDOT), the Department of Consumer and Regulatory Affairs (DCRA), the Historic Preservation Review Board (HPRB), etc. in connection to the Project and will provide the approvals necessary as the owner of the Property to get permits and approvals from such agencies.
- ODMPED acknowledges the potential need for public financing to complete this Project. To this end, ODMPED may assist VMP in identifying and attaining Federal public financing tools and will assist VMP in identifying and securing public financing provided by the District, including TIF, Housing Production Trust Funding, Industrial Revenue Bonds, and other similar options.
- ODMPED will assist in all community outreach activities based upon a mutually agreed upon schedule and communication process.



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- ODMPED will seek necessary council approvals under DC Official Code § 10-801 pursuant to the execution of a land disposition agreement, mutually acceptable to ODMPED and VMP.

**MASTER DEVELOPMENT
PROCESS:**

- ODMPED and VMP agree to negotiate a mutually acceptable LDA through which ODMPED would make the conveyances described above at the time set forth under the section entitled "Settlement" in this Amended Summary Term Sheet.
- Conveyance of the Property to the vertical component developers and VMP at closing ("**Land Closing**") shall be conditioned upon District of Columbia Council (Council) approval of the LDA and all land development approvals necessary for commencement of construction of the vertical improvements, proof of financial commitments by VMP to complete all development work and creation by VMP of a detailed, specific construction schedule for all land development work. Within 10 days following the Land Closing, VMP shall initiate land development work, pursuant to the schedule mutually agreed upon by ODMPED and VMP prior to the Land Closing. The land development work shall include:
 - 1) extraordinary site work to prepare the site for development by either preserving or demolishing certain filtration cells,
 - 2) installation all major roads and trunk utilities to serve the finished pad sites for vertical development, and
 - 3) construction of required park areas, landscaping and other common area site features, consistent with the phasing of the construction of the vertical improvements.
- All land development work will be completed by VMP and its consultants and sub-contractors and paid for by VMP. All sub-contractors shall be bonded and insured.
- The LDA will include a proposed schedule for the land development work (the "**Land Development Work Schedule**"). The land development work is estimated to take approximately 365 days (1 year) from the Land Closing to complete.
- The LDA will include a covenant from VMP to prosecute the land development work in accordance with the provisions of the LDA and the Land Development Work Schedule.
- VMP will oversee the completion of the vertical improvements on the Property in accordance with the provisions under Vertical Development Process in this Amended Term Sheet.



**LAND DEVELOPMENT
ECONOMICS:**

- During the Feasibility Period (as defined herein), VMP shall submit to ODMPED, for its review, a pro forma *Land Development Expenditures Budget* ("**Budget**") to be mutually agreed upon by VMP and ODMPED within thirty (30) days following the delivery of the proposed Budget to ODMPED.
- The Budget line items will include, but will not be limited to, the following costs: pre-development, planning, land development work, historic preservation, environmental remediation, interest carry on debt, private capital carry, settlement, development and general contracting fees, and contingency costs (collectively referred to herein as "**Land Development Expenditures**"). A sample Budget is provided in Exhibit C. The sample illustrates and estimates the proposed line items that may be included in the Budget, *but is not an exhaustive list of all line items to be included in the Budget*.
- ODMPED and VMP will agree on appropriate fee percentages for the development and general contracting line items during the Feasibility Period, and such fees will be paid in proportion to other Land Development Expenditures.
- The Budget will be utilized to determine private and public financing uses for the Project.
- The portions of the Property which will become the pad sites to be created by VMP's land development work will be conveyed to VMP Development Team Members and to the other vertical component developers, if any, identified prior to the Land Closing, subject to the terms of the LDA and a development agreement to be entered into between VMP and the vertical component developers (the "**Development Agreement**") which will require and authorize VMP to complete the land development work and require each vertical component developer to pay to VMP at the Land Closing (or later closing on the sale of those portions of the Property acquired by VMP at the Land Closing) an amount equal to the fair market value of the finished pad site (following completion of the land development work) (said funds being the "**Developer Funds**"), which Developer Funds shall be deposited into an escrow account to fund the costs of the land development work, in order to assure that VMP will have sufficient funds to complete the land development work. [See Exhibit B regarding the funding of any potential shortfall.]
- During the Feasibility Period and upon VMP and ODMPED agreement on the Concept Master Plan, VMP and ODMPED will commission an appraisal to be completed no less than 30 days prior to the conclusion of the Feasibility Period to determine:
 - 1) the market value for the Property prior to completion of any land development work ("**District Land Value**")
 - 2) the market value of product type set forth in the Concept Master Plan agreed upon by the District and VMP, including residential, retail, office, hotel, etc.



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- The appraisal will utilize industry standard approaches (a sample calculation of value is included in **Exhibit D**):
 - 1) All land development expenditures necessary to complete the land development work on the Property, shall be included in the Budget approved by ODMPED.
 - 2) A mutually agreed upon Affordable Housing Program, which will include all zoning requirements and any additional Affordable and Workforce Housing ("AWH") requirements as mutually agreed by VMP and ODMPED that exceed those AWH requirements included within the zoning requirements imposed on the Property, and the costs to meet all District public policy objectives for the Property as described under the Public Policy Objectives portion of this Amended Term Sheet.
 - 3) An expected development program to be approved through the PUD process per the Concept Master Plan,
 - 4) The timing of the purchase, which will be a purchase of the entire Property by VMP at one closing (taking into consideration the time value of money), with deeds at such closing from the District to the vertical component developers, VMP and the community owners association as described above, and
 - 5) A mutually agreed preferred return on costs, which is the agreed upon fair market return to VMP for its services in completing all aspects of the land development work.

- ODMPED and VMP will utilize the appraisal to agree on both the appropriate District land value and the fair market value of each finished pad site which will be owned by the vertical component developers following the completion of the land development work (the "**Finished Pad Site Fair Market Value**"). Having completed an estimated sources and uses table, if VMP suggests that the Property may have minimal or no land value in its current as-is condition, if and only if ODMPED does not provide public financing and the Property is subjected to public policy objectives including AWH, historic preservation, open space, and other similar objectives, VMP and ODMPED shall 1) maximize public policy objectives and 2) complete the Project with minimal public subsidy. As provided below, VMP will create a Revised Sources and Uses Table based upon the PUD approved development program and a revised schedule of Land Development Expenditures and revised Budget, which will be utilized to determine the District Land Value and Finished Pad Site Fair Market Value to be utilized for closing.

- If the VMP and District are unable to agree on the District Land Value of the Property, either party can terminate this Amended Summary Term Sheet and all deposits made by VMP or any of the VMP Development Team Members shall be returned to VMP or such VMP Development Team Members, whoever posted the deposits.



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- The Budget, Appraisal, and the agreed upon VMP Return on Cost will provide all necessary information to create an estimated sources and uses table during the Feasibility Period. Sources will include all estimated finished pad site fair market values for the finished pad sites (from the Appraisal) and all public financing and Subsidies, if any. Uses will include all Estimated Land development expenditures, the value of the Property including all public policy objectives, and the agreed upon VMP Return on Cost.
- VMP agrees to balance all sources and uses or to effect a surplus by which sources exceed uses. A sample Estimated Sources and Uses Budget is enclosed as **Exhibit D**.
- VMP commits to explore an array of Federal and other public financing options.
- Prior to the conclusion of the Feasibility Period, ODMPED and VMP will have agreed upon an i) Estimated Sources and Uses Budget, ii) a District Land Value for the Property to be included in the LDA (which shall be subject to adjustment as provided below), and iii) a Concept Master Plan to be included in the LDA.
- Ninety (90) days prior to the Land Closing, VMP will create the revised sources and uses table based on the PUD-approved development program (utilizing the fair market vertical values agreed per the Appraisal), the agreed upon District Land Value, revised Land Development Expenditures, and the agreed upon VMP Return on Cost revised per the revised Land Development Expenditures Budget. The revised sources and uses table will ensure that sources remain greater than or equal to the uses such that the Project may proceed. To the extent there is a shortfall of sources, VMP will make best efforts to secure necessary Federal, District, and other financing to allow the project to move forward. This revised sources and uses table will be created to ensure project viability prior to Land Closing. If the sources are not able to cover all uses, then the Land Closing will be delayed until ODMPED and VMP collectively agree on an appropriate financing approach to make the project economically feasible. VMP would take the lead on identifying such approaches.
- Conveyance of the Property by the District to the vertical component developers, VMP and the community owners association, and the commencement of the land development work will not occur until VMP and ODMPED concur that the sources are greater than or equal to the uses for the Project to ensure that there will be sufficient funds to complete the land development work.
- If there is any District Land Value, the District agrees that VMP will not pay such District Land Value at the Land Closing, but will defer payment of the District Land Value from VMP until the land development work has been completed.
- The sum of (a) the Developer Funds paid by the vertical component developers at the Land Closing or subsequent to the Land Closing at the time of acquisition of such vertical component developer's pad sites, and (b) the actual public financing received will:



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- 1) First, repay all the actual Land Development Expenditures for the entire Project that are funded by 3rd party financing, incurred or to be incurred, by VMP. The 3rd party financing will be secured by a 1st trust only on that portion of the Property acquired by VMP (and not by the vertical component developers or the community owners association) at the Land Closing.
- 2) Second, pay all equity and debt contributed by the District and VMP *para passu* including:
 - land equity plus preferred return, if any (to the District)
 - VMP debt and equity plus interest and preferred return (to VMP)
 - land equity and VMP debt and equity both will be secured by a 2nd trust on the Property.
- 3) Third, all remaining proceeds will be paid to VMP, as profit for the land development work efforts. The profit will not be paid to VMP until the land development work is substantially complete.

**VERTICAL DEVELOPMENT
PROCESS:**

VMP will contract with the vertical component developers who will acquire the pad sites and construct the vertical improvements on the finished pad sites. Disposition of pads sites will be executed through fee-simple deeds from the District at the Land Closing to those vertical component developers with whom VMP has contracted prior to the Land Closing. With respect to those pad sites for which contracts have not been entered into prior to Land Closing, the District will convey the remaining unsold pad sites to VMP and VMP will subsequently convey them to vertical component developers. At the Land Closing, and all subsequent conveyances of pad sites to vertical component developers, until such time as all land development work is completed, each vertical component developer will fund the Developer Funds (i.e., an amount equal to the fair market value of the portions of the Property acquired by the vertical component developer) into an escrow account (the "**Horizontal Land Development Escrow Account**"), which amount of the Developer Funds to be paid by each vertical component developer shall be determined by appraisal and analysis.

- A minimum of 20% of the approved FAR square feet of the approved master plan will be developed by LSDBE firms, which may include members of VMP.
- VMP will select, as necessary, third-party vertical component developers, if any (i.e., vertical component developers who are not VMP Development Team Members) concurrent to the pre-development process, either before or upon approval of a Phase 1 PUD (or similar approval) that approves the site plan, land uses, FAR, and thematic architecture for the development of the Property. Such



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third-party vertical component developers, if any, shall be selected by VMP, but shall be subject to reasonable approval by ODMPED.

- VMP and each vertical component developer will execute a development agreement detailing all business terms and the timing for settlement, for each of the finished pad sites created in the land development process, and the obligations of the vertical component developers with respect to the commencement and completion of the vertical improvements on such vertical component developer's pad site(s). VMP will use best efforts to execute such development agreement with all vertical component developers prior to Land Closing.
- VMP Development Team Members will be obligated to contribute the Developer Funds with respect to their respective pad site(s) acquired from the District at the Land Closing into the Horizontal Land Development Escrow Account at the Land Closing (or provide a letter of credit or other adequate assurances of the availability of such Developer Funds).
- ODMPED will approve the Concept Master Plan, which will detail those use types (as the parcels on which those use types are placed on the Concept Master Plan are subject the change) that VMP Development Team Members will develop. The estimated fair market values for pad sites to be owned by the VMP Development Team Members will be set forth in detail in the LDA.
- The construction of the vertical improvements at the Property is expected to occur in 2-3 Phases, each phase starting 18 months after commencement of the prior phase. It is a key objective of VMP and ODMPED to minimize the number of Phases to decrease the overall timeline for the Project and ensure project viability via pad site sales occurring at the earliest possible time.
- Each vertical component developer will enter into an Assignment and Assumption Agreement with the District and VMP pursuant to which the vertical component developer will agree to prosecute the construction of the vertical improvements on such vertical component developer's pad site(s) in accordance with the provisions of the LDA relating to the construction of the vertical improvements, the Development Approvals (as hereinafter defined) and the Land Development Work Schedule. Each vertical component developer shall be required to provide the guaranty to the District as described in **Exhibit B** to this Amended Summary Term Sheet (in draft form pending revision and final agreement between ODMPED and VMP, to be included as an amendment to this Amended Summary Term Sheet).
- VMP will coordinate the overall development of the Project, and will provide regular reports to ODMPED with respect to the construction of the vertical improvements based upon reports provided by the vertical component developers, but VMP will not be responsible for the construction of the vertical components, nor for the inspection of such vertical improvements for compliance with applicable laws,



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regulations and ordinances, or permits issued by the District to the vertical component developers.

- The development agreements to be entered into between the vertical component developers and VMP shall set forth the exact physical condition in which each development parcel/pad site to be conveyed by the District or VMP will be delivered to the vertical component developer.

1) VMP and each vertical component developer will agree on the specific tasks within the land development work to be completed by VMP with respect to the vertical component developer's pad site(s) and any land development tasks that will be completed by the vertical component developer on its own pad site(s).

2) VMP expects that the typical condition of the “finished” pads delivered as a result of the land development work to be completed by VMP will include all zoning entitlements and subdivision plats, rough grading, and utilities stubbed just inside the curb adjacent to completed spine roads identified in the development agreement.

3) In instances where grades or other impediments will not allow VMP to provide a finished pad, the development agreement between VMP and the vertical component developer of that pad site would allow and require that the vertical component developer complete certain land development tasks.

GUARANTEES:

Exhibit B “VMP Guarantees to District” (in draft form pending revision and final agreement between District and VMP, to be included as an Amendment to this Term Sheet), describes the pre-development, land development, and vertical construction guarantees.

VERTICAL CONSTRUCTION ECONOMICS:

- The vertical component developers with whom VMP shall have contracted prior to the Land Closing (including VMP Development Team Members and third-party vertical component developers, if any) will acquire their unfinished pad sites at the Land Closing by direct deed from the District, subject to the terms of the LDA with VMP which will provide for the completion of the land development work by VMP. The vertical component developers will be required to pay their respective Developer Funds into the Horizontal Land Development Escrow Account at the Land Closing (or at each later closing if VMP acquires the land from the District and subsequently conveys the land at a later date to the vertical component developer). The funding of these Developer Funds is described herein the section titled *Land Development Economics as well as in the Guarantees*.

Government of the District of Columbia



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- The District will be entitled to a percentage of the sales proceeds of the market rate, for-sale vertical residential improvements (including condominiums and townhomes), developed by VMP Development Team Members, above agreed upon sales values. The specific values and percentages will be set forth in the LDA.

**LOCAL, SMALL AND
DISADVANTAGED
BUSINESS ENTERPRISES:**

- Equity and Management Participation: VMP represents that no less than 20% of the equity capital invested into the Project will be invested by LSDBE firms in compliance with D.C. Official Code §§ D.C. Official Code §§ 2-217.01 (2007) *et seq.* VMP Development Team Members include at least three LSDBE firms: Smoot, USSC and JLC. Smoot and USSC will contribute 15% of the equity capital structure. The equity investments of Smoot and USSC will entitle them to 15% of the equity value created by the Project, in accord with current DSLBD policy at the time of LDA execution. JLC will contribute 15% of the equity capital structure. JLC's equity contribution will entitle it to 15% of the equity value created by the Project, in accord with current DSLBD policy at the time of LDA execution. The equity investments of Smoot, USSC and JLC will entitle each entity to proportionate levels of management participation in VMP, although EYA will be the Managing Member as stated above. VMP also represents that the listed LSDBE equity investors will not have their equity and/or management interests diluted under any circumstances, except in the event of a default by any such equity investor.

**CERTIFIED BUSINESS
ENTERPRISES:**

- CBE Agreement: VMP shall enter into an agreement (“**CBE Agreement**”) with the District of Columbia Department of Small and Local Business Development (DSLBD) and a First Source Agreement with the Department of Employment Services (DOES) for all services procurement activities in connection to the Project.
- Subcontracting: Qualified CBE firms will be awarded contracting opportunities equivalent to the value of at least 35% of the appropriate portions of the Budget. Vertical component developers must agree with CBE and all other such agreements.

**AFFORDABLE AND
WORKFORCE HOUSING:**

- VMP recognizes that mixed-income housing is a critical District public policy objective for the Property. The LDA shall contain AWH program guidelines for the residential components of the development, affordability guidelines, and income levels for the residential component of the development. Because a chief objective of the



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Project is to minimize Public Subsidy, ODMPED will not mandate 30% AWH, although the goal of ODMPED remains 30% AWH. Pending the Appraisal and Concept Master Plan, VMP proposes that the McMillan AWH program will include the District's proposed Inclusionary Zoning requirement of approximately 10% Affordable and Workforce Housing and up to 100 additional AWH units for seniors, who currently make up a sizeable portion of the existing community around the Property.

- The District will contribute to the Project some or all of its entire District Land Value, to an extent there is any positive District Land Value, in the Property to subsidize AWH.
- If agreed upon by ODMPED and VMP, and if necessary to sustain agreed upon AWH requirements, VMP may seek public financing tools, as described above, to subsidize AWH beyond those captured in any applicable Mandatory Inclusionary Zoning Program.

PUBLIC POLICY OBJECTIVES:

Apart from AWH, other District public policy objectives for the site include historic preservation, recreation spaces and parks, and cultural amenities. ODMPED and VMP will cooperate to develop a package of offerings to meet the public policy objectives and that will address the goals of the District and the community while also ensuring that the project is financially feasible and commercially viable, and the costs of such offerings will be included in the Land Development Expenditures Budget.

PROJECT CAPITAL STRUCTURE:

- VMP shall be responsible for arranging all private debt and equity capital necessary to finance the Project through completion. VMP also will provide guarantees or other securities to insure the successful completion of the Project as outlined in **Exhibit B** (in draft form pending revision and final agreement between District and VMP, to be included as an amendment to this Term Sheet) to this Amended Summary Term Sheet.
- ODMPED may assist VMP in identifying and attaining Federal public financing tools. ODMPED acknowledges that public financing likely may be necessary to achieve the public policy objectives for the development and ODMPED will cooperate with VMP in identifying and securing public financing. The preceding notwithstanding, ODMPED and VMP agree that one of the key objectives of the Project is to minimize public subsidy and financing.

EARNEST MONEY DEPOSIT:

- Pursuant to the Original Summary Term Sheet, VMP posted \$250,000 in the form of an irrevocable letter of credit (the "**Initial Deposit**") as consideration for the District's grant of the Exclusive Rights Period (as defined hereinafter). Such Initial Deposit shall become the Initial



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Deposit under this Amended Summary Term Sheet. The Initial Deposit was posted with Regional Title Incorporated, as agent for First American Title Insurance Company, and Regional Title Incorporated shall enter into an escrow agreement in a form mutually agreed upon by VMP, ODMPED and said escrow agent with respect to the escrow, holding and disbursement of all deposit funds under this Amended Summary Term Sheet, and when executed, the LDA.

- To the extent that the Initial Deposit or any Additional Deposit (as hereinafter defined) funds posted are in the form of a letter of credit, VMP shall have the right, at any time at VMP's sole option, to replace such letter of credit (or a portion of the letter of credit) with cash, in which event the cash shall be deposited by the escrow agent into an interest-bearing account and all interest accrued on the funds shall belong to VMP.
- If VMP terminates the Exclusive Rights Period at any time during the Feasibility Period, then the Initial Deposit shall be refunded immediately to VMP.
- If the Feasibility Period expires and the District and VMP cannot agree upon and execute an LDA within the agreed upon period of time (which may be extended per the Acceptance clause below), or if Council does not approve the terms of the disposition agreed upon by both parties, then VMP shall have the right, in its sole discretion, to terminate this Amended Summary Term Sheet, in which event VMP will receive a refund of the Initial Deposit and accrued interest, if any.
- The circumstances described above notwithstanding, if VMP does not terminate this Amended Summary Term Sheet during the Feasibility Period, then after the conclusion of the Feasibility Period, if execution of the LDA does not occur within the agreed upon period of time and VMP is determined by a court of competent jurisdiction to be solely responsible for failure to execute the LDA on terms mutually agreed upon by the District and VMP, the District will retain \$100,000 of the Initial Deposit and VMP shall assign all of its rights in and to all work product developed by VMP to the date of termination to ODMPED. (The right of the District to use such work product shall be subject to the terms set forth in the contracts with consultants preparing the same.) In the event the District's use of the work product is limited significantly by the terms of the consultants' contracts and consequently the value of the useable work product is deemed marginal by both the District and VMP, the District and VMP will mutually agree upon an additional value that the District may retain from the Initial Deposit incremental to the \$100,000 described above.
- Work product is defined as the studies, plans, analyses, etc. conducted during the Feasibility Period to determine the parameters of the redevelopment opportunities offered by Project.
- If the parties fail to execute an LDA within the Exclusive Rights Period, VMP shall assign to the District all work-product produced by VMP and warranties made by the consultants to VMP free of liens, at no cost and expense to the District (but the right of the District to use



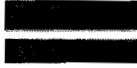
Office of the Deputy Mayor for Planning and Economic Development

such work product shall be subject to the terms set forth in the contracts with consultants preparing the same).

- Within five (5) days of the execution of the LDA, VMP shall increase the deposit by posting with the escrow agent a new letter of credit in the amount of additional \$750,000.00 ("**Additional Deposit**"), or amending the original letter of credit for the Initial Deposit to increase the amount of such letter of credit to \$1,000,000.00 ("**Total Deposit**").
- VMP will have the right to withdraw up to \$500,000 of the Total Deposit (or reduce the letter of credit if the deposit is in the form of a letter of credit) prior to Land Closing to pay for third party pre-development costs associated with the Property, including, without limitation, land planning, architectural services, civil engineering services, legal, accounting and other pre-development costs, but not including the preliminary feasibility studies and tests which were conducted during the Feasibility Period.
- The remainder of the Total Deposit will be returned to VMP in increments of \$250,000 per every 25% of FAR square feet conveyed to the vertical component developers.
- In the event, VMP is unable to obtain all or any of the Development Approvals or to complete the Project after obtaining all Development Approvals and acquiring the Property, \$750,000 of Total Deposit (and interest accrued on the Total Deposit, if any) will be refunded to VMP. If such inability to obtain the Development Approvals or to complete the Project is not caused in any way by the District, then the \$250,000 balance of the Total Deposit and all work product will be retained by the District.
- The Total Deposit (plus accrued interest thereon, if any) will be refunded to VMP in the event (i) the Council does not approve the terms of the disposition as mutually agreed upon by VMP and ODMPED, or (ii) the District does not execute the LDA on terms mutually agreed upon by VMP and ODMPED, or (iii) the District is deemed responsible in a court of law for the failure of VMP to receive Development Approvals or to complete the Project.

FEASIBILITY PERIOD:

- VMP shall be granted a 180-day feasibility period that will begin upon the execution of this Amended Summary Term Sheet and terminate 180 days thereafter (the "**Feasibility Period**").
- VMP shall utilize this Feasibility Period to complete its tests and studies and evaluation of the Property and hold meetings with the Office of Planning, the State Historic Preservation Officer ("**SHPO**"), several community organizations, and other critical stakeholders.
- VMP shall indemnify the District as provided in the Section entitled "Indemnification".
- To the extent not previously entered into, within 10 days of the execution of this Amended Summary Term Sheet, the District and VMP will enter into a right of entry agreement, in a form found to be legally sufficient by the Office of the Attorney General (OAG) and VMP, to



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provide VMP full access to the Property during the Feasibility Period ("**Right of Access**") to conduct all necessary site, traffic, soil, engineering and environmental studies. To the extent that the parties previously entered into an agreement to provide VMP the Right of Access, such agreement shall be extended to permit such Right of Access during the Exclusive Rights Period.

- VMP shall promptly provide the District with copies of the reports regarding the Property (including, but not limited to, any environmental testing reports) obtained during the Feasibility Period.
- During the Feasibility Period, VMP will propose to the District potential concept and vertical development plans for the Property. **Exhibit E** represents VMP's efforts on developing a Concept Master Plan for the Property.
- VMP and the District will utilize the Feasibility Period to:
 - 1) Agree on Concept Master Plan with community stakeholders, OP
 - 2) Complete the *Appraisal* for the Property and determine District Land Value to be included in LDA
 - 3) Agree on initial budgets and sources and uses of funds for the Project
 - 4) Identify the types of public financing that may be used for the Project

**FEASIBILITY
EXPENDITURES:**

Upon execution of this Amended Summary Term Sheet, VMP will continue its feasibility studies, title searches, and similar work typically performed during the Feasibility Period at its sole cost and expense.

TITLE:

- During the Feasibility Period, VMP shall obtain a commitment for title insurance (the "**Title Commitment**") and provide ODMPED with a copy of such Title Commitment and a notice of any title exceptions that it would like the District to remove from the Property prior to the Land Closing (the "**Title Objections**"). The District, in its sole and absolute discretion, may agree to cure the Title Objections. If the District elects not to remove the Title Objections or the Title Objections are not curable, VMP may either waive the Title Objection or terminate the LDA and receive a refund of the Total Deposit, or that portion posted to the date of termination, and all interest accrued thereon, if any.
- The District will convey fee simple title in the form of Special Warranty Deed to VMP and to the vertical component developers with respect to their development parcels, and to the community owners association with respect to the common areas, all at the Land Closing, free and clear of any and all liens and encumbrances which the District has elected to cure, as well as all exceptions not listed in the Title Commitment as affecting the Property as of the effective date of the Title Commitment. However, such conveyances to the vertical component developers will be subject to the terms of the



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LDA and the reversionary rights reserved to the District as set described in **Exhibit B** (in draft form pending revision and final agreement between District and VMP, to be included as an Amendment to this Term Sheet).

DEVELOPMEENT APPROVALS:

VMP and the District agree that redevelopment of the Property will require approval of Council under DC Code § 10-801 and the following approvals (the “**Land Use Approvals**”):

- 1) Zoning Commission (via the submission and approval of 2 Phase PUD)
- 2) Historic Preservation Review Board (“**HPRB**”)

In addition, VMP must obtain the following additional development approvals and permits (the “**Land Development Approvals**”):

- 1) Grading and Sediment Erosion Control Plan
- 2) Utility Plans
- 3) Final Site plan
- 4) Final Plats
- 5) Other Site plans
- 6) Subdivision Plats or Assessment and Taxation Plats to

establish separate assessment and taxation parcels for the individual development parcels and the common area parcels.

The Land Development Approvals are issued by DCRA, OTR, WASA, PEPCO, and other utility companies. The Land Use Approvals and Land Development Approvals will constitute the “**Development Approvals.**” A detailed list of all Land Development Approvals will be included in the LDA. VMP reserves the right, but is under no obligation, to submit at its sole cost and expense applications for the Development Approvals prior to execution of the LDA.

TIMELINE:

VMP anticipates that the land development work with respect to the Property will be substantially completed approximately 1 year from the initial groundbreaking and commencement of the land development work. VMP anticipates that the vertical improvements will be completed by the vertical component developers in 2 phases. Phase 1 vertical improvements are anticipated to be substantially completed approximately 2 years from the completion of the land development work. Phase 2 vertical improvements are anticipated to be completed approximately 2 years following the completion of the Phase 1 vertical improvements. The outside completion dates for land development work and vertical improvements are articulated in **Exhibit B** (in draft form pending revision and final agreement between ODMPED and VMP) to this Amended Summary Term Sheet.

BROKERAGE:

VMP and the District represent that no real estate broker has represented either party in this transaction and that no brokerage commission will be paid to any party.



INDEMNIFICATION:

VMP shall indemnify and hold the District harmless from all claims by third parties for damages or expenses incurred by reason of property damage, personal injury, or mechanics liens arising from the VMP's activities on the Property, except for claims arising from the negligent acts of the District's employees that are not otherwise covered by VMP's insurance. VMP acknowledges that the District is self-insured and is legally prohibited from granting indemnifications.

ENVIRONMENTAL LIABILITY:

During the Feasibility Period, VMP will conduct tests and assessments to determine if, and to what extent, hazardous materials are present on the Property. Additional testing may occur after the conclusion of the Feasibility Period. At all times, VMP will promptly provide the District with results of the tests and assessments in writing. With respect to unknown environmental contamination, VMP will purchase environmental liability insurance if available at commercially reasonable rates, and the cost of such insurance shall be included in the Budget. AT LAND CLOSING, THE DISTRICT WILL CONVEY THE PROPERTY TO VMP AND EACH OF THE VERTICAL COMPONENT DEVELOPERS IN ITS "AS-IS" "WHERE-IS" PHYSICAL CONDITION. THE DISTRICT WILL MAKE NO REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OF THE LAND CONSTITUTING THE PROPERTY.

CONFIDENTIALITY AGREEMENT:

To the extent permitted by law, this Amended Summary Term Sheet shall be considered confidential and by receipt hereof, VMP and the District hereby agree to keep its contents and all matters related thereto strictly confidential, except that the parties shall have the right to discuss the terms set forth herein with Council and their respective agents, advisors, consultants, and representatives who shall be advised of the confidential nature hereof. Summaries of terms and processes critical to the community process can be prepared and agreed upon by the District and VMP and distributed to the community.

NON-BINDING EFFECTS:

This Amended Summary Term Sheet is intended to be an expression of concepts only by the parties who sign and accept it and shall in no event be deemed to be or constitute a binding contract agreement or other legally enforceable obligation between said persons or entities to such matters or any commitment that the parties will reach discussed herein, except as described in the Exclusive Rights Period described below. If no LDA is entered into, the District is under no obligation to reimburse VMP or its consultants, sub-contractors or successors for any cost, expense, or efforts incurred.



ANTIDEFICIENCY ACT

LIMITATIONS:

VMP acknowledges that the District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that the District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act.

SETTLEMENT:

The LDA will provide that settlement on the fee-simple disposition of the Property from the District to VMP, the vertical component developers and the community owners association at the Land Closing. The Land Closing will take place on the later to occur of 30 days after (i) the receipt of the last of the Development Approvals, or (ii) the date upon which the District and VMP concur that the land and vertical development of the Project is commercially viable and financially feasible. If a vertical component developer does not settle on the acquisition of a development parcel on its specified closing date per its agreement with VMP, VMP will have the sole discretion to select a new vertical component developer, subject to all conditions set forth in the LDA. Notwithstanding anything to the contrary, the District shall have no obligation to convey any Property or go to Land Closing unless and until all construction schedules, financing, plans and government approvals as required in the LDA have been finalized and established to the reasonable satisfaction of the District.

DEFAULT:

The LDA shall set forth remedies of the District in the event of a default by VMP or any vertical component developer under the LDA. Such remedies shall include a right of the District, following notice and cure rights of VMP or the vertical component developer, as applicable, and the rights of lenders holding liens on the applicable portion of the Property, to declare a termination of the fee title of the defaulting party in favor of the District and termination of all rights and interests in the Property conveyed in any deed by the District to the defaulting party, and to re-enter the property as the sole owner thereof, which remedies shall be exercised in accordance with the terms set forth in **Exhibit B** (Guarantees) to this Amended Summary Term Sheet (in draft form pending revision and final agreement between ODMPED and VMP to be included in an amendment to this Amended Summary Term Sheet).

ACCEPTANCE:

- VMP will have the exclusive right to negotiate the LDA with the District 365 days after the date of this Amended Summary Term Sheet ("**Exclusive Rights Period**"). The Exclusive Rights Period may be extended by 365 days or more provided that the parties mutually agree to



Office of the Deputy Mayor for Planning and Economic Development

extend the Exclusive Rights Period in the form of a written amendment to this Amended Summary Term Sheet prior to expiration of the Exclusive Rights Period.

- The terms outlined herein indicate the intention of the parties only and the operative terms shall be set forth formally and completely in the LDA to be agreed upon and entered into between VMP and the District.
- Immediately following the execution of this Amended Summary Term Sheet, VMP and the District will instruct their respective legal counsels to initiate preparation of the LDA. All parties to the LDA will participate in the review and formation and will negotiate the LDA in good faith to attempt to reach mutual agreement on same as soon as possible.
- The District will submit the LDA agreed to by VMP and to Council for approval promptly following agreement on the LDA. ODMPED and VMP have 365 days from the date of execution of this Amended Summary Term Sheet to obtain approval of the LDA from Council. In the event the LDA is not approved by Council within the defined time period and the time period is not extended, the terms outlined herein will expire.
- The District and VMP will endeavor to agree on the final form of the LDA to be submitted to Council by the conclusion of the Feasibility Period. A Project Schedule will be attached to the LDA and will be utilized to measure progress on the Project.
- NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPTING ONLY THE “EXCLUSIVE RIGHTS PERIOD” PROVIDED ABOVE IN THIS SECTION, THIS AMENDED SUMMARY TERM SHEET IS NOT LEGALLY BINDING ON ANY PARTY HERETO AND IS ONLY FOR THE PURPOSE OF GUIDING THE NEGOTIATION OF THE LAND DISPOSITION AGREEMENT CONTEMPLATED HEREIN AND NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO BIND THE DISTRICT OF COLUMBIA TO DO OR ABSTAIN FROM ANY ACT, EXCEPT AS PROVIDED IN THE FIRST PARAGRAPH OF THIS SECTION, I.E., THE “EXCLUSIVE RIGHTS PERIOD,” AND THIS AMENDED SUMMARY TERM SHEET SHALL BE OF NO LEGAL FORCE OR EFFECT.

[Signatures on following pages]

Government of the District of Columbia



Office of the Deputy Mayor for Planning and Economic Development

**ACKNOWLEDGED AND AGREED:
DISTRICT OF COLUMBIA**

By: _____

Name: **Neil O. Albert**

Title: Deputy Mayor for Planning and Economic Development

Date:

[Signatures continued on following page]

Government of the District of Columbia



Office of the Deputy Mayor for Planning and Economic Development

VISION MCMILLAN PARTNERS
c/o EYA, LLC

By:

A handwritten signature in black ink, appearing to read "LeRoy Eakin III", with a long horizontal flourish extending to the right.

Name: **LeRoy Eakin III**
Company: EYA, LLC
Title: Chairman
Date: 2/17/09

By:

A handwritten signature in black ink, appearing to read "Robert Youngentob", with a long horizontal flourish extending to the right.

Name: **Robert Youngentob**
Company: EYA, LLC
Title: President
Date: 2/17/09

Government of the District of Columbia



Office of the Deputy Mayor for Planning and Economic Development

Exhibit A

Vision McMillan Partners Development Team Members

#	Company	Role	LSDBE Firm	Form of Equity	% Equity
1	EYA, LLC	Managing Member, Lead Investor, Lead Developer		cash	56%
2	The Jair Lynch Companies/MacFarlane Partners (LSDBE entity)	Community Outreach Specialist/Equity Investor	LSDBE	cash	15%
3	Smoot Construction	Equity Investor	LSDBE	cash	7.5%
4	Urban Services System Corporation	Equity Investor	LSDBE	cash	7.5%
5	The Alexander Company	Historic Preservation Developer		in-kind services	9%
6	StreetSense	Mixed-Use, Retail Consultant/Developer		in-kind services	5%
					100%



Exhibit B

SUMMARY TERM SHEET
McMillan Redevelopment Project

VMP Proposed Guarantees to the District

VMP proposes to the District that VMP will: a) seek appropriate PUD and other necessary approvals to allow this Project to move forward, b) complete all necessary land development work pursuant to the terms of the LDA which are mutually agreed upon by VMP and the District, and c) implement measures to assist the District achieve its goal to have all vertical improvements completed. The comprehensive results of this proposed mix of assurances is the following:

Prior to Closing:

1. Following execution of the LDA, and prior to Land Closing, VMP will spend roughly \$4 - \$5 million in engineering, architectural, legal and other “predevelopment” costs to seek a PUD approval for the Project and to prepare for the Closing. The only way VMP secures a return on this spending is to complete the Project.
2. VMP agrees to assign to the District all of VMP's rights to the work product resulting from this \$4 - 5 million in pre-development costs (subject to the conditions on the use of such work product as may be imposed by the consultants providing the work product to VMP).
3. In the event VMP defaults prior to Land Closing under the LDA (following appropriate notice and cure rights to be included in the LDA), the District will be free to dispose of the Property to another developer.
4. As provided in the Amended Summary Term Sheet, VMP will post a \$1 million deposit upon execution of the LDA that will further guaranty VMP's performance of its obligations under the LDA.

Post-Closing Horizontal Land Development

5. At Closing, the District will be paid, in cash, the fair market value for the Property as established pursuant to the terms of the Amended Summary Term Sheet. At the request of VMP, the District will convey the development parcels directly to the applicable vertical component developers at Land Closing and the common areas of the community to a community owners association.



Office of the Deputy Mayor for Planning and Economic Development

6. At Land Closing under the LDA, VMP will have entered into a contract with a general contractor to complete 100% of the land development work that will include removal and/or construction of appropriate water storage facilities, all major roads and trunk utilities for the redevelopment, and all parks and preservation areas. The LDA will specify the work to be included in the land development work. The land development work does not include the land development work that will need to be completed on individual development parcels/pad sites, which will be the responsibility of the vertical component developer for that particular development parcel/pad site.
7. At Land Closing, VMP will guarantee to the District that all of the land development work will be completed within 5 years from the date of Land Closing on the conveyance of the Property, subject to force majeure delays. This guaranty will be in the following format:
 - a. VMP will agree to make no distributions for profit to any VMP Development Team Member until the land development work is substantially complete.
 - b. In addition, certain VMP Development Team Members, specifically Jair Lynch Development Partners, LLC and Eakin-Youngentob Associates, Inc (and potentially other VMP Development Team Members to be designated by VMP) will provide an "entity level" guaranty of completion, which guaranties should be treated by the District as "**Reputational Guaranties.**"
8. At Land Closing under the LDA, the District will convey the development parcels within the Property to the vertical component developers with whom VMP has contracted to convey individual development parcels, including VMP Development Team Members and independent third party purchasers identified by VMP. Each such vertical component developer to which one or more development parcels is conveyed shall be obligated to pay its respective share of the Horizontal Land Development Work Required Funds (as hereinafter defined) into the Land Development Escrow Account (as hereinafter defined) at Land Closing.
9. In order to assure the District that the land development work will be promptly completed, VMP will assure that funds in an amount equal to 110% of the costs of all land development work remaining to be completed at any point in time (not including projected profit), or 100% of budgeted costs (including profit) for all land development work remaining to be completed at any point in time (such amount required to complete the land development work being referred to as the "**Land Development Work Required Funds**"), will be deposited into an escrow account at Closing (the "**Land Development Escrow Account**") or otherwise be available to complete the land development work. To accomplish this, VMP will require that each vertical component developer pay on the date of Land Closing under the LDA (and the simultaneous conveyance of development parcels to the vertical component developers), an amount equal to the fair market value of the development parcel(s) being conveyed to the vertical

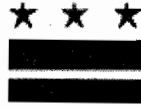


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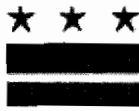
component developer (the "**Developer Funds**"), which Developer Funds shall be deposited into the Land Development Escrow Account. To the extent that the aggregate amount of the Developer Funds deposited by each vertical component developer into the Land Development Work Escrow Account at Land Closing does not equal the Land Development Work Required Funds, then VMP shall fund (through cash or a letter of credit) the difference between (a) the Land Development Work Required Funds and (b) the total amount of the Developer Funds deposited by all vertical component developers into the Land Development Escrow Account at Land Closing under the LDA (such difference being referred to as the "**Potential Shortfall**"). The funds in the Land Development Escrow Account will guarantee that should VMP be unable to complete the land development work, that there will be sufficient funds in the Land Development Work Escrow Account at all times to allow for the completion of the then remaining land development work.

10. To the extent that a Potential Shortfall exists, then VMP will seek new debt financing in an amount necessary to meet the Potential Shortfall so as to assure that there will be sufficient Land Development Work Required Funds available at Closing under the LDA. The debt financing shall be secured only by deeds of trust granted by VMP on those parcels within the Property which are owned by VMP and have not been conveyed to vertical component developers and such financing shall be in an amount less than 50% of the fair market value of those VMP-owned parcels. To the extent that title to any of the development parcels which are owned by VMP at the date of the Land Closing are subsequently conveyed to vertical component developers prior to the completion of the land development work, then the net sales proceeds from those sales shall be used first to pay off the debt financing obtained and the remaining net sales proceeds shall be deposited into the Land Development Escrow Account, to the extent needed to meet the Land Development Work Required Funds.

11. Should VMP fail to complete this land development work resulting in a default in VMP's commitment to the District and the vertical developers to complete the land development work, and if VMP fails to cure the default after written notice and a reasonable cure period, and if the lenders providing the financing for the land development work under the terms of the LDA and the relevant financing documents do not exercise their rights to step in and cure the default of VMP (which lender rights shall be provided in the LDA), then the individual vertical component developers will have the right (following written notice to VMP and the District) to act collectively to complete the land development work and draw upon the Land Development Escrow Account to obtain reimbursement for the actual costs incurred to complete the land development work. If the vertical component developers fail to exercise the foregoing "self-help" remedy and begin completion of the land development work within an agreed-upon period of time following VMP's default and failure to cure, then the District may elect, at its option, to complete the land development work and to draw upon the Land Development Escrow Account to obtain reimbursement for the actual costs incurred to complete such land development work.



12. Any funds remaining in the Land Development Escrow Account upon substantial completion of the land development work and payment of all costs for said land development work shall be applied to payment of the debt and equity financing which may have been obtained to assure that there were sufficient Land Development Work Required Funds to complete the land development work, and the remaining balance in the Land Development Escrow Account shall be paid as profit to VMP (or if VMP fails to complete the land development work, then to the vertical component developers or the District, whichever party substantially completes the land development work following VMP's failure to do so).
13. VMP will provide the District with copies of all financing agreements, demonstrating the rights of the lenders in monitoring VMP's performance of the land development work and the rights of the lenders to step in and cure the defaults of VMP, including, without limitation, the right to step in and complete the land development work.
14. VMP may be subject to financial penalties imposed by vertical component developers if VMP fails to complete the land development work so as to deliver pads in accordance with the terms of the purchase and sale contracts between VMP and the vertical component developers.
15. VMP may, subject to negotiations of the terms of the financing agreements with the lenders providing the Potential Shortfall financing for the Land Development Work Required Funds, be subject to financial penalties imposed by the lenders if VMP fails to complete the land development work and deliver pads in accordance with the terms of the financing agreements.
16. The terms of the financing agreements may also subject VMP to additional interest payments due to the lenders if VMP fails to complete the land development work and deliver pads in accordance with the requirements of the financing agreements.



Vertical Component Development

17. VMP will select, and the District shall approve, which approval shall not be unreasonably withheld, all vertical component developers who are not VMP Development Team Members, if any. The parties acknowledge that it is in the best interest of the parties to convey at Land Closing under the LDA with the District as many of the development parcels as may be necessary to provide the Land Development Work Required Funds for the Land Development Escrow Account.
18. Each vertical component developer ownership entity approved by the District will provide an entity level Reputational Guaranty to the District and to VMP to assure substantial completion of all vertical improvements on its development parcel no later than the later to occur of (i) 5 years following substantial completion of the land development work, or (ii) seven (7) years following such vertical component developer's acquisition of fee simple title to the parcel (the "**Vertical Construction Guaranty**").
19. In the event that all improvements on a development parcel which has been conveyed to a vertical component developer are not completed in accordance with the foregoing Vertical Construction Guaranty, then:
 - a. VMP shall use commercially reasonable efforts to work with the secured lender providing financing to the vertical component developer and the District to complete construction and/or obtain a replacement vertical component developer to complete the construction of the vertical improvements. Over a 6 month period following such default by the vertical component developer, VMP will use commercially reasonable efforts to evaluate the development parcel and the status of the improvements with the lender to assume ownership/and or development completion responsibility (and the funding from the lender to complete such construction of the improvements) or facilitate through VMP or a 3rd Party firm the development and sale of the development parcel to a reputable alternative vertical component developer who would be given an additional 3 year period to complete the vertical improvements. VMP would assume the costs to facilitate this 6 month effort.
 - b. Vertical component developers will warrant that secured debt from private sources (not including HUD, FHA, Public Financing) shall not exceed 80% of the fair market value, per appraisal, of the development parcel and proposed improvements. (As example, if a vertical component developer of a medical office building cannot complete its \$100 million office building, then the District can take title to the property for \$1, receiving the equity invested in this building up to that point or up to \$20 million in this example.) The foregoing limitation on debt financing encumbering a development parcel shall be included in each deed to a vertical component developer.



20. At Land Closing under the LDA, VMP will provide an entity level Reputational Guaranty to the District with respect to all vacant and unsold parcels not under a Vertical Construction Guaranty obligating VMP to either:
- a. Execute a disposition of that parcel, within five (5) years after the Closing by the District and VMP under the LDA, to a vertical component developer who will provide a new Vertical Construction Guaranty as described in paragraph 18 above, or
 - b. If the disposition does not occur within said 5 year period and VMP is in default under the LDA, the District will have the option to take title to that development parcel (provided that all lender rights have been exhausted under the terms of the LDA and the Assignment and Assumption between the vertical component developer, VMP and the District).
21. Each vertical component developer will provide the District with copies of all financing agreements, demonstrating the rights of the lender in monitoring the vertical component developer's performance and the lender's right to step in and cure the defaults of the vertical component developer, including, without limitation, to the right to step in and complete the construction of the vertical improvements in the unlikely event of non-performance by the vertical component developer.
22. Each vertical component developer will be required to build out the vertical improvements on its pad site consistent with all covenants in the deeds to its land, and in accordance with all PUD-approved uses, design guidelines, affordable housing, etc. requirements imposed on such development parcel.
23. Each vertical component developer will provide the District with a copy of the construction contract for the construction of the vertical improvements, which construction contract shall include either a GMP or construction completion bond guarantying completion of the general contractor's scope of work.

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Exhibit C

VMP McMillan Land Development Expenditures Budget

Costs

		<u>Total</u>
Total Site Costs	*	\$30,012,149.84
	*	
	Total Site Costs	30,012,150
Field Super & Gen Cond (% of Site Costs)	* 8%	2,496,752
Admin, Insur, & Finance (% of Site Costs)	* 4%	1,248,376
Architecture	*	1,250,000
Engineering	*	2,750,000
Permits & Fees	*	700,000
Legal	*	1,500,000
Proffers	*	500,000
Community Benefits	*	1,000,000
GC Overhead (% of Site Costs)	3%	936,282
	Total Development Costs	42,393,559
Dev Overhead (% of Dev Costs)	5%	2,204,540
Contingency (% of *)	15%	6,473,179
	Total Site Development Costs	51,071,278
Interest - A&D Loan (6.75%)		1,000,000
Interest/Pref - W/F Equity Loan (7.75%)		-
	Total Costs	\$ 52,071,278

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Office of the Deputy Mayor for Planning and Economic Development

Exhibit D

VMP McMillan Estimated Sources and Uses and Residual Land Value

<u>Unit Type</u>	<u># of Units</u>	<u>Area (SF)</u>	<u>Average Base Sales Price</u>	<u>Total Revenue</u>	<u>Workforce Housing Reduction (10%)</u>	<u>Net Revenue</u>
Phase 1 - Vertical Developers Close at Closing w/City and Start of LD:						
Hotel/Retail		105,000	\$ 38	\$ 3,990,000	\$ -	\$ 3,990,000
Stick Condo	87		\$ 40,000	\$ 3,480,000	\$ 348,000	\$ 3,132,000
Stick Rental	300		\$ 30,000	\$ 9,000,000	\$ 900,000	\$ 8,100,000
Retail/Grocer		80,000	\$ (40)	\$ (3,200,000)	\$ -	\$ (3,200,000)
Office		150,000	\$ 40	\$ 6,000,000	\$ -	\$ 6,000,000
Skilled Nursing	200		\$ 20,000	\$ 4,000,000	\$ -	\$ 4,000,000
Retail		22,000	\$ -	\$ -	\$ -	\$ -
Affordable Sen Stick	100		\$ 1,000	\$ 100,000	\$ -	\$ 100,000
Town	100		\$ 100,000	\$ 10,000,000	\$ 750,000	\$ 9,250,000
Office		150,000	\$ 38	\$ 5,700,000	\$ -	\$ 5,700,000
Stick Rental	175		\$ 35,000	\$ 6,125,000	\$ 612,500	\$ 5,512,500
Town	120		\$ 110,000	\$ 13,200,000	\$ 990,000	\$ 12,210,000
Total	1,082	507,000	\$	\$ 58,395,000	\$ 3,600,500	\$ 54,794,500

Gross Vertical Value 1,082 507,000 - 58,395,000 3,600,500 54,794,500

Workforce Housing Percentage 10%

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Sources	
Gross Vertical Pad Sales	\$ 54,794,500
Total Sources	\$ 54,794,500
Uses	
Land Development Cost	\$ 52,071,278
VMP Profit	\$ 2,723,222
Total Uses	\$ 54,794,500

Residual Land Value	
Gross Vertical Pad Sales	\$ 54,794,500
Land Development Cost	\$ (52,071,278)
5% Return on Cost (Profit)	\$ (5,207,128)
Residual Land Value Estimate	\$ (2,483,906)